STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JESSIE JOHN JACKSON and JOHSLIN LARUE JACKSON, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CLEE JACKSON,

Respondent-Appellant,

and

JOHSLIN MAE JACKSON,

Respondent.

UNPUBLISHED
May 4, 2010

No. 294160
Wayne Circuit Court
Family Division
LC No. 01-399911-NA

Before: MURPHY, C.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Respondent Clee Jackson appeals as of right from the trial court order terminating his parental rights to his minor children under MCL 712A.19b(3)(c)(*i*), (g), (h), and (k)(*ii*). We affirm.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Powers Minors*, 244 Mich App 111, 117; 624 NW2d 472 (2001). Once the petitioner has established a statutory ground for termination by clear and convincing evidence, and the court finds that termination is in the best interest of the children, the trial court must order termination of parental rights. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 352-353; 612 NW2d 407 (2000). The trial court's decision, including the best interests determination, is reviewed under the clearly erroneous standard. MCR 3.977(J); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009).

On appeal, respondent challenges the termination of his parental rights only on the ground that the state failed to make reasonable efforts to reunite him with the minor children.

We find that, under the circumstances of this case, the state did not have a duty to provide respondent with services geared toward reunification.

Under most circumstances, the statute requires the state to make "'[r]easonable efforts to reunify the child and family.'" *In re Rood*, 483 Mich at 99-100, quoting MCL 712A.19a(2); see also *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005), citing MCL 712A.18f(1), (2) and (4) (holding that the state in general is required "to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan"). The state's obligation to make reasonable efforts at reunification extends to the non-custodial parent, particularly when it becomes clear that reunification with the custodial parent is unlikely. See *In re Rood*, 483 Mich at 119-122.

However, this Court has indicated that it is not reasonable for the state to provide services where reunification is not intended. *In re LE*, 278 Mich App 1, 21; 747 NW2d 883 (2008), citing MCL 712A.18f(1)(b) (agency may explain why services were not provided). In *In re LE*, this Court held that the state had no duty to make reasonable efforts to provide the respondent with services to facilitate reunification. *Id.* at 21. In several places, as the panel noted, the statute refers to services to be provided to return "the child *to his or her home*." *Id.* at 18-19 (emphasis in original), citing MCL 712A.18f(3)(c) and MCL 712A.18f(3)(d). The Court reasoned that reunification of the child *with the respondent* had never been the agency's goal -- at first because the respondent was only the putative father, and later because a petition was filed seeking termination of his parental rights. *Id.* at 21. The Court held that "[s]ervices need not be provided where reunification is not intended," adding, "[f]urther, [the respondent] was incarcerated or in inpatient drug treatment until late October 2006 and could not have participated in services." *Id.*

Like the respondent father in *In re LE*, respondent here was incarcerated and unable to participate in services throughout the pendency of these proceedings. He was not waiting for the children in their home, or even, like many non-custodial parents, in his home. To the contrary, at the time of the termination hearing, he had been in prison for eight years for possession of the firearm that killed his stepson with his six-month-old baby in the room and for criminal sexual conduct with another daughter. As in *In re LE*, the goal of the DHS in this case was never to reunify the children with respondent. The goal was initially to reunite the children with their mother, and the orders consistently noted that the father was incarcerated and unable to participate in the planning. As of the order issued on June 25, 2008, the permanency planning goal for both children had become, and remained, adoption by their uncle.

In an abundance of caution, the DHS did provide services to respondent. The agency provided respondent with all of the services it reasonably could while he was in prison, including a parent-agency agreement, delivering mail from him to the minor children, and arranging for him to make telephone calls to the children from prison. However, the state was never under a duty to provide any services to respondent because the goal was never to reunite him with the children.

Moreover, even if we agreed with respondent that the state failed to make reasonable efforts toward reunification, we would affirm the termination of his parental rights. Although not challenged on appeal, termination of respondent's parental rights was proper under MCL 712A.19b(3)(k)(*ii*), which provides:

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

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(ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

Reasonable efforts at reunification are unnecessary when the conduct described in § 19b(3)(k)(*ii*) is involved. MCL 712A.19a(2)(a); MCL 722.638(1)(a)(*ii*); *In re Rood*, 483 Mich at 118. Respondent was convicted of first and second-degree criminal sexual conduct against his daughter, the half-sibling of the minor children in this case, and he admitted as much during his testimony. Because there is no way any father can mitigate this particular type of unfitness, the reasonableness of any reunification services is moot under this subsection. See *id.* Therefore, clear and convincing evidence established that termination was proper in this case under § 19b(3)(k)(*ii*), independent of the reasonable efforts argument. A trial court needs "clear and convincing evidence of only one statutory ground to support its termination order." *In re Powers Minors*, 244 Mich App at 118.

In his brief, respondent makes additional arguments that he failed to properly preserve for appeal as they were not included in the statement of questions presented. *In re Hansen*, 285 Mich 158, 164-165; 774 NW2d 698 (2009). He argues that (1) the termination of his parental rights pursuant to § 19b(3)(h) was not supported by clear and convincing evidence, and that (2) the record did not contain clear and convincing evidence that termination was in the children's best interests. Respondent's statement of questions presented only provides, "Did the lower court err when it terminated respondents[sic]-appellant's parental rights where the Family Independence Agency did not make reasonable efforts to reunify this respondent-appellant to the minor child?" Although respondent failed to preserve these issues, we will decide issues of law when the record is factually sufficient. *Id.* at 165.

We find that termination of respondent's parental rights was proper under §§ 19b(3)(c)(*i*), (g), and (h). Although respondent does not challenge this ground on appeal, the termination of respondent's parental rights was proper under MCL 712A.19b(3)(c)(*i*) because the conditions that led to the adjudication continued to exist at the time of the termination hearing, and there was no reasonable likelihood that these conditions could have been rectified within a reasonable time. At the time of adjudication, respondent was in prison and could not care for the children, necessitating court involvement to provide for their care and custody. At the time of the termination hearing, over two and one-half years remained of respondent's minimum prison sentence, with the possibility that he could remain imprisoned until mid-2021. Even if respondent would be released from prison on his early release date of January 4, 2012, it would have been unreasonable for the trial court to force the children to wait another two and one-half years for permanence, especially given the fact that both children have special needs. It would be even more unreasonable to further delay the children's adoption on the hope that respondent may be released early by virtue of an appeal of his criminal convictions.

The termination of respondent's parental rights was also proper under both MCL 712A.19b(3)(g) and (h). Three factors must be established under § 19b(3)(h). The first is that "the parent is imprisoned for such a period that the child will be deprived of a normal home for a

period exceeding 2 years" from the time of the termination hearing. See *In re Perry*, 193 Mich App 648, 650; 484 NW2d 768 (1992). As we have explained, the second and third factors necessary to establish § 19b(3)(h) (that the parent has not provided for the child's proper care and custody and that there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child) are the same two elements that alone justify termination under § 19b(3)(g) (failure to provide proper care and custody with no reasonable expectation of providing it within a reasonable time), if supported by clear and convincing evidence. *Id.* at 650-651.

The first element of § 19b(3)(h) was established here because the children will be deprived of a normal home with respondent for a period exceeding two years from the time of the termination hearing. Respondent argues, without support in the record, that he might be released on some unspecified date in 2011. The record clearly established that respondent's early release date was January 4, 2012, and the termination hearing occurred in August 2009 -- a period exceeding two years. The second and third factors of § 19b(3)(h), and the only elements of § 19b(3)(g), were also established by clear and convincing evidence. Respondent has not provided for the children's proper care and custody since his imprisonment began in July 2001, and, as explained above, there is no reasonable expectation that he will be able to do so within a reasonable time considering the children's ages and their special needs.

Respondent also contends that the trial court erred in holding that termination of his parental rights would be in the children's best interests. Again, we disagree. The record is replete with evidence that the children's best interests are served by the termination of respondent's parental rights. Respondent has posed an active danger to his own children in the past. He left an illegal, loaded firearm under a mattress accessible to children (with which the respondent mother's older son accidentally killed himself), and he sexually assaulted his own 13-year-old daughter (the minor children's half-sibling). Respondent has been in prison since July 2001 for those offenses. In 2002, he was sentenced to 10½ to 20 years in prison. While his earliest possible release date is January 4, 2012, it is also possible that he will not be released until mid-2021, when his children will be 24 and 20 years of age. He has been absent from the minor children's lives in any meaningful way since Jessie was just short of five years old and Johslin was 11 months old. When the children did have telephone contact with him, Jessie began scratching himself and kept a bowl of his own urine in his room and Johslin got "worked up" after the call.

Further, the minor children in this case have been in care since December 2006, and they waited in foster care for two and one-half years before parental rights were terminated. Each has special needs that require consistency. Respondent has not parented them for many years, was a danger to them when he lived in the same house, and raises anxiety in the children just by speaking with them on the telephone. Even if respondent had not remained in prison at the time of the termination hearing, the trial court would not have clearly erred in holding that it was in the children's best interests to terminate respondent's parental rights.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Joel P. Hoekstra